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Chairman

Gary Moccia, P.E.  
Vice Chairman

Robert Anderson  
Administrator

Date: April 6, 2010

Name of Appellant: Winter Street Trust c/o Ralph  
Gilbert

Service Address: Walter Adams, WBA Associates  
36 River Ridge  
Wellesley, MA. 02481

In reference to: Holiday Inn Express Hotel  
385 Winter Street  
Waltham, MA. 02451

Docket Number: 10-834

Property Address: Holiday Inn Express Hotel  
385 Winter Street  
Waltham, MA. 02451

Date of Hearing: 01-19-10

Enclosed please find a copy of the decision on the matter aforementioned.

Sincerely:

**BUILDING CODE APPEALS BOARD**

Patricia Barry, Clerk

cc: Building Code Appeals Board  
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD  
DOCKET NO.: 10-834

Walter Adams,	)
Appellant,	)
	)
v.	)
	)
City of Waltham,	)
Appellees	)
	)

**MEMORANDUM OF DECISION AND ORDER ON APPELLANT'S  
REQUEST FOR FURTHER REVIEW**

**PROCEDURAL HISTORY**

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board overturn the local building commissioner's determination that the occupancy use for the property at 385 Winter Street, Waltham, MA had changed, and if necessary, requested that the Board grant a variance from 7<sup>th</sup> edition 780 CMR 310.1. In accordance with GL c. 30A, §§10 & 11; GL c. 143, §100; 801 CMR 1.02 *et. seq.*; and 780 CMR 122.3.4, the Board convened a public hearing on January 19, 2010 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appearing on behalf Appellant was Walter Adams, Bud Shadrawy, Keith Gilbert, and Darrell Lemar. Appearing on behalf of the Appellee was Ralph Gaudet, Brian Bower, Clifford Richardson, and Luke Stanton.

**DISCUSSION**

The issue before the Board is whether the property in question should be classified as an R-1 or R-2 occupancy under 780 CMR 310.1. 780 CMR 310.1 defines an R-1 residential

occupancy as one "where the occupants are *primarily transient* in nature, including:...(b) Hotels (transient)". Further, 780 CMR 310.1 defines an R-2 occupancy as one "containing sleeping units of more than two dwelling units where the occupants are *primarily permanent* in nature, including:...(h) Hotels (nontransient)". The property in question is a Holiday Inn Express hotel, which is owned by the appellant.

The Board found that the property should be classified as an R-1 occupancy. It reasoned that the property is transient in nature because the majority of the accommodated guests were standard business and personal travelers. *Cf.* Building Code Appeals Board docket #10-833. The Board further reasoned that the small number of guests that were homeless families covered under the state's Community Service Network program and that were staying for extended periods of time was not substantial enough to change the hotel's occupancy classification. At hearing, a motion was made to allow the Appellant to maintain the hotel's occupancy as an R-1. There was a second on the motion and the Board vote was taken, which was unanimous.

#### ORDER

For the forgoing reasons, the Appellant's request to continue maintaining the property as an R-1 occupancy is hereby **GRANTED**, by a vote of 3-0,



DOUGLAS SEMPLE



ALEXANDER MACLEOD



WILLIAM MIDDLEMISS

DATED: February 12, 2010

*In accordance with M.G.L. c. 30A, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after receipt of this decision.*